

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

DIANE ALVAREZ,

Plaintiff,

v.

TARGET CORPORATION,

Defendant.

NO: 13-CV-0150-TOR

ORDER OF DISMISSAL WITHOUT  
PREJUDICE

BEFORE THE COURT is Plaintiff's Notice of Voluntary Dismissal  
Pursuant to FRCP 41(a)(1)(A)(i) (ECF No. 17).

PROCEDURAL HISTORY

Plaintiff filed the instant lawsuit in Spokane County Superior Court on  
March 24, 2103. Defendant removed the case to this Court on April 18, 2013.  
ECF No. 1. On May 15, 2013, Defendant moved to dismiss Plaintiff's Complaint  
for failure to state a claim. ECF No. 12. The Court heard oral argument on the  
motion on July 8, 2013. ECF No. 15. On July 10, 2013, the Court entered an  
order dismissing each Plaintiff's claims and granting Plaintiff leave to amend her

1 complaint within thirty days. ECF No. 16. Plaintiff filed her Notice of Voluntary  
2 Dismissal on July 30, 2013. ECF No. 17. As of that date, no amended complaint  
3 had been filed.

#### 4 DISCUSSION

5 Federal Rule of Civil Procedure 41(a) allows a plaintiff to voluntarily  
6 dismiss his or her complaint without a court order “by filing a notice of dismissal  
7 before the opposing party serves either an answer or a motion for summary  
8 judgment.” Fed. R. Civ. P. 41(a)(1)(A)(i). Because Defendant has not filed an  
9 answer or a motion for summary judgment, Plaintiff has an absolute right to  
10 voluntarily dismiss this case without prejudice. *Concha v. London*, 62 F.3d 1493,  
11 1506 (9th Cir. 1995). The fact that Defendant previously filed a successful motion  
12 to dismiss does not appear to deprive Plaintiff of this right. *See id.* (“Even if the  
13 defendant has filed a motion to dismiss, the plaintiff may terminate his action  
14 voluntarily by filing a notice of dismissal under Rule 41(a)(1).”) (citation omitted).  
15 It is unclear what effect, if any, the Court’s dismissal of Plaintiff’s claims with  
16 leave to amend will have on Plaintiff’s ability to re-file this action in state court.  
17 Given that Plaintiff’s Notice of Voluntary Dismissal was “effective on filing,”  
18 however, the Court no longer has jurisdiction to decide this issue. *Id.*

**IT IS HEREBY ORDERED:**

Pursuant to Plaintiff's Notice of Voluntary Dismissal Pursuant to FRCP 41(a)(1)(A)(i) (ECF No. 17) this case is **DISMISSED** without prejudice and without an award of fees or costs to either party.

The District Court Executive is hereby directed to enter this Order, and provide copies to counsel, and **CLOSE** the file.

**DATED** August 2, 2013.



*Thomas O. Rice*  
THOMAS O. RICE  
United States District Judge